

TENNESSEE REAL ESTATE COMMISSION MINUTES

October 3, 2007

The Tennessee Real Estate Commission convened on October 3, 2007, at 10:30 a.m., at the Supreme Court Appellate Building at 719 Locust Street, Knoxville, TN 37901. The following **Commission Members were present: Chairman Charles Haynes, Vice Chairman William (Bear) Stephenson, Commissioner Gary Cunningham, Commissioner Isaac Northern, Commissioner Grover Collins, Commissioner Wendell Alexander, and Commissioner David Flitcroft. Commissioner Carol Tate was absent. Others Present: Eve Maxwell, Executive Director, Kathryn Wiseman, Staff Attorney, Mandy Brady, Legal Liaison and Kelly McDermott, Administrative Secretary.**

The first order of business was the adoption of the agenda (**Exhibit 1**) for the October 2007 Commission meeting. Chairman Haynes deleted Tab 1, Robert Peters' informal conference from the agenda at the applicant's request. **Commissioner Alexander made a motion to adopt the revised agenda; seconded by Commissioner Stephenson; Motion Carried.**

The next order of business was the approval of the minutes from the September 2007 meeting (**Exhibit 2**). **Commissioner Alexander made a motion to approve the minutes from the September 2007 meeting; seconded by Commissioner Northern; Motion Carried.**

INFORMAL APPLICANT CONFERENCES

Robert Peters was scheduled but did not appear.

Mark Phillips, applicant, appeared with his Principal Broker Ted Hensley to request licensure as an Affiliate Broker. Mr. Phillips disclosed a DUI conviction in February 1998 and a second DUI conviction in September 1998. He also disclosed two felony convictions for Failure to Appear. **Commissioner Alexander made a motion to approve; seconded by Commissioner Collins; Motion Carried.**

LICENSEE/APPLICANT REQUESTS

Betty S. McDow, licensee 282953, requested that the Commission consider her request that her license be reinstated without penalty. A clerical error was made by the TREC staff and she did not receive her renewal notice. **Commissioner Northern made a motion to waive Ms. McDow's late penalties; seconded by Commissioner Collins; opened for discussion; Commissioner Cunningham asked staff how returned mail is handled administratively. Staff advised that every attempt is made to contact the person and correct the information. If the licensee cannot be contacted, the returned mail is sent to the licensee file; Roll Call Vote: 4 Yes, 3 No; Motion Carried.**

John E. Montgomery, licensee 245046, requested that the Commission refund his reinstatement penalties for his license and his firm license. **Commissioner Alexander made a motion to deny; seconded by Commissioner Flitcroft; Motion Carried.**

Vanessa Barthold, applicant, requested that the Commission consider allowing her to sit for the affiliate broker examination and be granted licensure if she passes and meets all licensing requirements. Ms. Barthold disclosed to the Commission a conviction of Shoplifting in 1998. **Commissioner Cunningham made a motion that Ms. Barthold may appear to request approval of her license; seconded by Commissioner Alexander; Motion Carried.**

Robert A. Waters, applicant 314396, requested that the Commission consider his request that his license application be processed even though he is unable to provide proof of high school graduation. **Vice-Chairman Stephenson made a motion to approve; seconded by Commissioner Northern; Commissioner Collins amended the motion to include that Mr. Waters be required to provide proof of identity; seconded by Commissioner Alexander; Motion as Amended Carried; Original Motion Carried.**

Cindy Hawkins, licensee 261966, requested that the Commission consider her request to have the continuing education for reinstatement waived. The Commission had received a letter from her husband and principal broker explaining that it was his mistake that his wife did not renew. **Commissioner Northern made a motion to allow Mr. Brad Hawkins to attend in lieu of his wife; seconded by Commissioner Collins; Commissioner Cunningham was opposed; Motion Carried.**

Martha Arkovitz, licensee 261054, requested a waiver of the 50 mile rule; **Commissioner Alexander made a motion to approve; seconded by Commissioner Flitcroft; Motion Carried.**

Elizabeth Davis, applicant 314951, requested a waiver of the 50-mile rule. **Commissioner Alexander made a motion to approve; seconded by Commissioner Collins; Motion Carried.**

Susan O. Verlander, applicant 314951, requested that the Commission allow her to live in Georgia and act as Principal Broker for a firm in Brentwood, TN. **Commissioner Northern made a motion to deny; seconded by Commissioner Collins; Motion Carried.**

Winton Preston, licensee 254685, requested that the Commission grant him a waiver from posting a sign outside his business. **Commissioner Collins made a motion to deny; seconded by Commissioner Alexander; Motion Carried.**

EDUCATION REPORT, DR. KATHY RIGGS, EDUCATION DIRECTOR

Since Dr. Kathy Riggs did not attend the Commission meeting in Knoxville, Ms. Maxwell presented the Education Report in her absence.

- **Course Information** - Ms. Maxwell presented courses for Commission evaluation (**Exhibit 3**). **Vice-Chairman Stephenson made a motion to approve all courses as presented but to defer the following courses until the November meeting so Dr. Riggs may present details of the courses: "Scope of Work & Appraiser Due Diligence", "FHA, the URAR and the 1025", "National USPAP Update Course", and "Survey of Cost Approach"; the instructor for each of these four courses must be approved as well; seconded by Commissioner Northern; Motion Carried.**
- **Pass/Fail Ratio Report (Exhibit 4)** – Ms. Maxwell presented statistics on all schools with 50 or more candidates who tested in the 3rd quarter of 2007. Chairman Haynes requested that at the November meeting Dr. Riggs present statistics for all schools with any candidates who tested during the 3rd quarter. Chairman Haynes explained that statistics will be published in the TREC newsletter.
- **Seminars** – Ms. Maxwell provided a form (**Exhibit 5**) that Commissioners may fill out with suggestions for potential seminar sites.

COMMISSIONER REPORTS

Commissioner Alexander reported on the ARELLO annual meeting in New York City in September. Commissioner Alexander made comments about the various seminars he and Chairman Haynes attended during the convention.

Chairman Haynes reported on the License Anniversary Recognition Breakfast held that morning for east Tennessee licensees who have held their licenses for 40 plus years.

Vice-Chairman Stephenson reported on the Sub-Committee meeting held on September 6, 2007. Vice-Chairman Stephenson reported that it was decided to increase the travel budget from \$2,000 to \$50,000. Ms. Maxwell explained that with a budget expansion of the Education and Recovery Fund, the Commission may use up to \$504,000. This would make it possible to print manuals for all active licensees.

Chairman Haynes recessed the meeting for lunch at 12:35 p.m. and reconvened at 2:00 p.m.

EXECUTIVE DIRECTOR'S REPORT, EVE MAXWELL, EXECUTIVE DIRECTOR

- **Complaint Statistics Report (Exhibit 6)** – TREC has a total of 592 open complaints. However, 77 of the 592 open complaints were staff generated Agreed Citations and 91 are complaints against Principal Brokers pursuant to Policy # 07-002 [Errors & Omissions Insurance]. There are 35 new complaints since the September meeting. There are 461 complaints in the legal department and 131 open complaints in the TREC office awaiting response. The total number of closed complaints for the current Fiscal Year 2007-2008 is 49. Total Civil Penalties paid in August were \$7,550.00. The year to date for the FY2007-2008 is \$24,500. Commissioner Alexander asked if all outstanding Agreed Citations are being followed up on by the new staff attorney. Ms. Kathryn Wiseman, staff attorney, explained that the legal department is in the process of contacting all respondents. Commissioner Cunningham pointed out that the total Agreed Citations paid have fallen significantly in recent months. Ms. Maxwell explained she believes as the complaint process is streamlined the money collected will increase. Chairman Haynes requested that at the end of the meeting, staff report the total amount of civil penalties assessed during the meeting. This information can be used to track incoming paid penalties versus outstanding penalties. Commissioner Alexander wants all directives by the Commission to be completed by new legal staff. Commissioner Alexander wants the principal broker's role in the complaint explored during the processing of the complaint and if merited the Commission may vote to open a complaint against the Principal Broker when the review of the affiliated licensee's complaint is heard.
- **Streamlining the Complaint Process** – Ms. Maxwell explained that TREC is faced with many complaints which have no merit and are an abuse of the complaint process. She presented examples of such complaints in which the person filing the complaint is simply seeking retribution against the other party. She asked the Commission for suggestions on how to minimize these complaints. Chairman Haynes stated that the Commission must accept all complaints regardless of the circumstances. Chairman Haynes suggested all complaints involving signage and advertising violations could be deferred until the more serious complaints involving fraud, stealing earnest money, criminal activity and so on are presented.

- **E&O Report (Exhibit 7)** – Ms. Maxwell explained to the Commission the status of all Agreed Citations sent to principal brokers. TREC sent 324 Agreed Citations to Principal Brokers who had affiliates or they themselves did not have the required 2 year E&O insurance policy. Of the 324 complaints, 233 complied by the compliance deadline of September 17, 2007 and were dismissed. As of September 28, of the remaining 91 complaints sent, four have paid their fines and 87 were still unpaid. Seven complaints had been returned undeliverable or unclaimed. Eight Principal Brokers have provided proof of E&O insurance but have not paid their penalty. As of Friday, September 28, 201 licensees do not have E&O in place. Chairman Haynes advised Ms. Maxwell and legal counsel to set up a few informal conferences with those not in compliance and who have not paid the penalty. Commissioner Alexander suggested that future penalties may be issued against the affiliates not in compliance as well. There was a discussion about disciplinary action that may be taken against the affiliates and principal brokers to encourage them to comply. For example, the fines will be increased or formal hearings for revocation may be held. **Commissioner Alexander made a motion to file 201 formal hearings before the next Commission meeting.** Ms. Wiseman explained that you must give the respondent 30 days notice before you can hold a formal hearing. Chairman Haynes suggested that we hold several hearings instead of 201. **Motion failed for lack of a second.** Licensees will not be renewed if E&O Coverage is not in place at the time of renewal. Commissioner Alexander inquired if the auditors had been sent to the firms where the Agreed Citations were returned to TREC. Staff advised that auditors have not been sent to the firms. **Commissioner Alexander made a motion to send auditors to the firms whose Agreed Citations came back undeliverable or unclaimed; seconded by Vice-Chairman Stephenson; Motion Carried.**

- **TREC Manuals** – Ms. Maxwell presented Lexis Nexis' proposal for the purchase of 7,000 manuals. Ms. Wiseman advised the Commission that there is an error made by the Secretary of State's office in the manual that should be corrected prior to future printings. It was decided that the 7,000 manuals would be purchased as printed with a one sheet correction of the error. **Commissioner Alexander made a motion that Commissioner Cunningham negotiate the purchase of the 7,000 manuals at \$3.98 per manual now and also order the additional 43,000 manuals next year when the new rules take effect at \$3.98 a manual; seconded by Collins; Motion Carried.**

- **Budget (revisited)** – Ms. Maxwell gave the Commissioners a summary of monies available in the budget of the Education & Recovery Fund. The Commission may use the work program amount of \$292,000. When the Commission nears using the \$292,000, they may apply for a budget expansion to increase the amount to \$504,000. Once you enter into the budget expansion amount of \$504,000, those monies will be deducted from the FY2008-2009 budget. Any interest accrued will remain in the FY2008-2009 budget. Interest accrues at approximately \$186,000 per year. Commissioner Alexander questioned why the TREC law manual states that the Commission is the steward of the money and that they may spend it down to \$500,000. Chairman Haynes requested that Ms. Maxwell go to the Commissioner of the Department of Commerce and Insurance and discuss the discrepancy between the statements in the law book and the information being reported to the Commission. Chairman Haynes wants to know why the Commission does not have access to accrued interest from past years that went unused and why that is not available when needed. He wants the administration to define the capital of the account versus the interest. If it is necessary to contact the Attorney General for clarification, Chairman Haynes would like a legal opinion.

Commissioner Flitcroft inquired about the possibility of getting several informal conferences scheduled for the following month. Ms. Wiseman explained that informal conferences may be held with one Commissioner and do not need to be open to the public. The Commission is willing to also come in and do additional formal hearings for a week with a five member quorum each day.

Commissioner Flitcroft reported on a seminar that he went to regarding appropriate legislation for illegal immigrants. Effective January 1, 2008 if a principal broker employs an illegal immigrant, they can have their real estate license revoked. Per the legislation, on a first offense, if the principal broker terminates the illegal employee, no action will be taken. On a second offense or subsequent offense within 3 years, the principal broker may lose their license for one year. Principal brokers need to carefully check the I-9 forms completed for employment. He explained that the statute lists 3 websites that principal brokers may check to verify information. Commissioner Flitcroft would like for the information regarding illegal immigrants be placed on the TREC website or in the TREC newsletter.

Ms. Maxwell explained to the Commission that she will be holding a once a month staff meeting the Monday after each Commission meeting. Ms. Maxwell also explained that attempts are being made to simplify the application for reciprocity. Staff will also be attending customer service training the following week on how to handle difficult situations in the workplace.

COMMISSIONER REPORTS (revisited)

Vice-Chairman Stephenson expressed how pleased he is that the Commission could meet in East Tennessee and offer the opportunity for licensees to attend.

Chairman Haynes adjourned the meeting at 4:10 p.m. on October 3, 2007.

TENNESSEE REAL ESTATE SUB-COMMITTEE COMMISSION MINUTES October 4, 2007

The Tennessee Real Estate Commission convened on October 4, 2007, at 9:10 a.m., at the Supreme Court Appellate Building at 719 Locust Street, Knoxville, TN 37901. The following **Commission Members were present: Chairman Charles Haynes, Vice Chairman William (Bear) Stephenson, Commissioner Gary Cunningham, Commissioner Isaac Northern, Commissioner Grover Collins, Commissioner Wendell Alexander, and Commissioner David Flitcroft. Commissioner Carol Tate was absent. Others Present: Eve Maxwell, Executive Director, Kathryn Wiseman, Staff Attorney, Mandy Brady, Legal Liaison and Kelly McDermott, Administrative Secretary.**

COMMENTS/QUESTIONS FROM THE ATTENDEES

Chairman Haynes called for comments or questions from the attendees.

Dennis Morgan, Principal Broker of Re/Max First Parkway in Maryville, TN, asked to be recognized and given permission to address the Commission. Mr. Morgan spoke about his thoughts on how principal brokers can track their affiliates renewals and E&O insurance. His agency has set up a tickler file and he notifies each of his affiliates when they are nearing renewal. Commissioner Collins asked if there was a way to limit the amount of times that an affiliate may transfer in a year because it causes confusion on locating an agent with correspondence from TREC.

Licenseses who attended the Commission meeting in order to obtain continuing education credits appeared before the Commission and gave statements regarding what they had learned from the meeting.

The next order of business was an informal conference with Mr. Gary Fritts.

Gary Fritts, licensee 274941, appeared before the Commission because he submitted his Tennessee Broker Examination Application and answered "Yes to the question that reads "Have you ever had a complaint filed against your with any regulatory agency in any court?". Mr. Fritts has a lawsuit pending and requested that the Commission allow him to test to become a broker and receive his broker license upon passing the test and meeting all other requirements. Mr. Fritts explained the circumstances surrounding his lawsuit. Ms. Wiseman, staff attorney, advised the Commission that they may want to wait to make a decision until the litigation is concluded. **Commissioner Cunningham made a motion to defer the request until after the lawsuit is settled; seconded by Commissioner Northern; Roll Call Vote: 6 Yes, 1 No; Motion Carried.**

Legal Report, Kathryn Wiseman, Staff Attorney (Exhibit 8)

- **2006032071 – Commissioner Collins made a motion to dismiss; seconded by Vice-Chairman Stephenson; Motion Carried.**
- **2007071201 – Commissioner Alexander made a motion to dismiss; seconded by Vice-Chairman Stephenson; Opened to discussion; Motion Failed. Commissioner Collins made a motion to issue a consent order with a civil penalty of \$650.00; seconded by Commissioner Northern; Motion Carried.**
- **2007072411 – Vice-Chairman Stephenson made a motion to issue a consent order with a civil penalty of \$100.00; seconded Commissioner Northern; Motion Carried.**
- **2007057771 – Commissioner Northern made a motion to close and flag the file; seconded by Vice-Chairman Stephenson; Motion Carried.**
- **2007057891 – Commissioner Northern made a motion to close and flag the file; seconded by Vice-Chairman Stephenson; Motion Carried.**

The following cases are violations for failure to maintain E&O insurance. In each case, the Respondent did not comply with the Agreed Citation which provided for a \$100.00 civil penalty.

- **2007068321**
- **2007068281**
- **2007068301**
- **2007061621**
- **2007061601**
- **2007061251**
- **2007059341**
- **2007057001**
- **2007063601**
- **2007063501**
- **2007063491**
- **2007063451**

- 2007063441
- 2007068261
- 2007068221
- 2007057881
- 2007057611
- 2007057551

For all of the above complaints, Commissioner Flitcroft made a motion to authorize informal hearings and formal hearings if necessary, and issue a consent order with a civil penalty of \$1000.00 and a \$10.00 per day penalty for every day after October 4 until they pay and show proof of insurance; seconded by Commissioner Alexander; Roll Call Vote: 4 Yes, 3 No; Motion Carried.

The following cases are violations for failure to maintain E&O insurance. Respondents did not comply with the Agreed Citations which provided for a \$100.00 civil penalty. In each case the Respondent's license is either inactive or retired.

- 2007068291
- 2007060071
- 2007064131
- 2007064121
- 2007063401
- 2007068201

For all of the above complaints, Commissioner Collins made a motion to close and flag the file and issue a consent order with a civil penalty of \$1000.00 upon reactivation; seconded by Commissioner Cunningham; Motion Carried.

The following cases are violations for failure to maintain E&O insurance and failure to complete administrative measures for transfer. In each case, the Respondent did not respond to the Agreed Citation which provided for a \$350.00 civil penalty.

- 2007057931
- 2007057641
- 2007057571
- 2007057951
- 2007057541

For all of the above complaints, Vice-Chairman Stephenson made a motion authorize formal hearings and issue a consent order with a civil penalty of \$1500.00; seconded by Commissioner Cunningham; Motion Carried.

- 2007057631 – Commissioner Cunningham made a motion to close and flag the file and issue a consent order with a civil penalty of \$1500.00 upon reactivation; seconded by Vice-Chairman Stephenson; Motion Carried.
- 2007061381 – Commissioner Northern made a motion to dismiss; seconded by Vice-Chairman Stephenson; Motion Carried.

- **2005038891 – Commissioner Alexander made a motion to defer to the November meeting and have Commissioner Flitcroft review the case; seconded by Vice-Chairman Stephenson; Motion Carried.**
- **2007053111 – Commissioner Cunningham made a motion to dismiss; seconded by Commissioner Collins; Motion Carried.**
- **2006040981 – Commissioner Alexander made a motion to hold an informal conference before the entire Commission with all documentation; seconded by Commissioner Flitcroft; Motion Carried.**
- **2007069881 – Commissioner Cunningham made a motion to dismiss; seconded by Commissioner Northern; Motion Carried.**
- **2007070691 – Commissioner Alexander made a motion to defer and obtain information on the principal broker and the date the respondent was originally licensed; seconded by Vice-Chairman Stephenson; Motion Carried.**
- **2006038861 & 2006038862 – Commissioner Flitcroft made a motion to issue a consent order with a civil penalty of \$1000.00 to both the affiliate and the principal broker and they both must attend a two day Commission meeting of the Tennessee Real Estate Commission within six months; seconded by Commissioner Collins; Motion Carried.**
- **2007072541 – Commissioner Flitcroft made a motion to dismiss; seconded by Vice-Chairman Stephenson; Motion Carried.**
- **2007070591, 2007070592, & 2007070593 – Commissioner Collins made a motion to close the complaint and monitor litigation; seconded by Vice-Chairman Stephenson; Motion Carried.**
- **2007066541 – Commissioner Alexander made a motion to dismiss; seconded by Vice-Chairman Stephenson; Motion Carried.**
- **2007063181 & 2007063182 – Commissioner Flitcroft made a motion to dismiss; seconded by Commissioner Northern; Motion Carried.**
- **2006024291 – Commissioner Collins made a motion to dismiss; seconded by Commissioner Flitcroft; Motion Carried.**
- **2007049421 – Commissioner Alexander made a motion to issue a consent order with a civil penalty of \$10,000; seconded by Commissioner Flitcroft; Opened to Discussion; Commissioner Alexander withdrew his motion; Commissioner Flitcroft withdrew his second; Commissioner Flitcroft made a motion to refer the case to the District Attorney's office in the respondent's county; seconded by Commissioner; Motion Carried.**
- **2007060021 – Commissioner Collins made a motion to defer and hold an informal conference with the respondent and Vice-Chairman Stephenson in the form of a teleconference if necessary with the option to hold a formal hearing; seconded by Commissioner Flitcroft; Motion Carried.**

- **2007062931 – Commissioner Collins made a motion to send a Letter of Warning; seconded by Commissioner Flitcroft; Motion Carried.**
- **2007061491 – Commissioner Flitcroft made a motion to dismiss; seconded by Commissioner Alexander; Motion Carried.**
- **2006017301 – Commissioner Flitcroft made a motion to defer and have legal staff review previous decisions for complaints involving failure to disclose criminal convictions; seconded by Vice-Chairman Stephenson; Motion Carried.**
- **2006020281 & 2006020282 – Commissioner Collins made a motion to dismiss; Motion Failed for lack of second; Opened to discussion; Commissioner Flitcroft made a motion to defer and obtain repair receipts and hold an informal teleconference with the respondents and Chairman Haynes; seconded by Commissioner Alexander; Motion Carried.**
- **2007072171 – Commissioner Cunningham made a motion to dismiss; seconded by Commissioner Collins; Motion Carried.**
- **2007058241 – Commissioner Cunningham made a motion to defer and to have the legal staff review the previous rulings for complaints involving failure to disclose criminal convictions; seconded by Commissioner Collins; Motion Carried.**
- **2006032041 – Commissioner Alexander made a motion to dismiss; seconded by Commissioner Collins; Motion Carried.**
- **2006033601 – Commissioner Alexander made a motion to close and flag; seconded by Commissioner Collins; Motion Carried.**

COMMENTS/QUESTIONS FROM THE ATTENDEES

Licensees who attended the Commission meeting in order to obtain continuing education credits appeared before the Commission and gave statements regarding what they had learned from the meeting.

Chairman Haynes adjourned the meeting at 12:50 p.m.